

# Exhibit 23

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13 Attorneys for Plaintiff and the Class

14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
15 **COUNTY OF LOS ANGELES**

16 Coordination Proceeding  
17 Special Title (Rule 1550(b))

18 ANTELOPE VALLEY GROUNDWATER  
19 CASES

20 RICHARD A. WOOD, an individual, on  
21 behalf of himself and all others similarly  
22 situated,

23 Plaintiff,

24 v.

25 LOS ANGELES COUNTY  
26 WATERWORKS DISTRICT NO. 40; et  
27 al.

28 Defendants.

Judicial Council Coordination  
Proceeding No. 4408

(Honorable Jack Komar)

Case No.: BC 391869

**DECLARATION OF MICHAEL D.  
MCLACHLAN IN SUPPORT OF  
OPPOSITION TO WILLIS' CLASS  
MOTION TO WITHDRAW  
BASED ON CONFLICT OF  
INTEREST OR, IN THE  
ALTERNATIVE, MOTION FOR  
CONTINUANCE OF THE PHASE  
VI PHYSICAL SOLUTION TRIAL**

Date: August 25, 2015  
Time: 10:00 a.m.  
Dept.: 12 (San Jose)

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**DECLARATION OF MICHAEL D. MCLACHLAN**

I, Michael D. McLachlan, declare:

1. I make this declaration of my own personal knowledge, except where stated on information and belief, and if called to testify in Court on these matters, I could do so competently.

2. I am co-counsel of record of record for Plaintiff Richard Wood and the Class, and am duly licensed to practice law in California. I make this declaration in support of the opposition to the Willis Class’ motion to withdraw.

3. Attached as **Exhibit 1** is a true and correct copy of the Court’s order of September 11, 2007.

4. Attached as **Exhibit 2** is a true and correct copy of the Court’s order of May 22, 2008.

5. Attached as **Exhibit 3** is a true and correct copy of the Court’s order of September 2, 2008.

6. Attached as **Exhibit 4** is a true and correct copy of the Final Judgment Approving Willis Class Action Settlement.

7. Attached as **Exhibit 5** is a true and correct copy of the Amended Final Judgment Approving Willis Class Action Settlement.

8. Over the years, I have had numerous phone calls and exchanged many emails with Ralph Kalfayan and/or David Zlotnick on the issue of individuals being members of both classes – an issue I have been aware of since sometime in 2008. I am fairly certain that in late 2008, I discussed this issue with David Zlotnick in the context of Class Notice, but I cannot determine the exact date.

9. On March 20, 2009, I was part of an exchange of many e-mails between Willis Class Counsel (Mr. Zlotnick and Mr. Kalfayan), regarding the issue of “Dual” Class membership. True and correct copies of two e-mails

1 authored by David Zlotnick, and copied to numerous lawyers including Mr.  
2 Kalfayan, are attached as **Exhibits 6 and 7**. Mr. Kalfayan did respond in this  
3 string of e-mails, but did not raise and disagreement with the position of the  
4 Willis Class as set forth by Mr. Zlotnick.

5 10. I next discussed this issue dual class membership with Willis Class  
6 Counsel at the hearing of April 24, 2009, in the context of certain class notice and  
7 strategic issues. I know I discussed the issue David Zlotnick, but I cannot say  
8 whether Mr. Kalfayan was party to that discussion. The Willis Class position on  
9 dual class membership remained as set forth above.

10 11. I discussed the “dual” class membership issue with Ralph Kalfayan  
11 again on February 1, 2010, in conjunction with our discussion about the impact of  
12 the consolidation motion. At that time Mr. Kalfayan did not state any concern  
13 with the dual class membership issue. I have no recollection of Mr. Kalfayan  
14 raising a conflict of interest concern relating to class membership until his phone  
15 call to me on June 18, 2015.

16 12. Attached as **Exhibit 8** is a true and correct copy of the March 20,  
17 2009 e-mail from David Zlotnick to “Dual” Class member Scott Savage advising  
18 him to pursue his class membership in both classes.

19 13. Until June of 2015, at no time do I recall Willis Class counsel  
20 informing me that they were advising “dual” class members that they were not in  
21 the Willis class. I have consistently advised such members that they were in both  
22 classes if they owned properties that pumped and did not pump.

23 14. Mr. Kalfayan has stated that his firm has received and responded to  
24 calls and emails from over 1,500 Willis Class members over the years. Attached  
25 as **Exhibit 9** (see Declaration of Ralph B. Kalfayan in Support of Motion for An  
26 Award of Attorneys’ Fees, ¶ 40 (Dkt. No. 4240, January 24, 2011)). If there is in  
27 fact an overlap of dual class membership greater than 70%, it is very hard to  
28 believe that Olaf Landsgaard was the first person to raise the issue. Basic

1 principles of statistics would dictate that over 1,200 “dual” class members have  
2 contacted Willis Class counsel. My belief in this regard is also based on the fact  
3 that I have had it raised to me in e-mails or phone call from at least as many as 50  
4 Small Pumpers Class members, and perhaps several dozen more than that.  
5 During these calls, I have refrained from discussing my views regarding Willis  
6 Class issues, and have always instructed “dual” class members to contact Willis  
7 Class Counsel on such issues.

8 15. After the court hearings on March 26, 2015, Mr. Kalfayan informed  
9 me that he was considering filing a motion to withdraw based upon the refusal of  
10 the Court to appoint experts for the Willis class premised upon an inadequacy of  
11 counsel argument. He informed me that he wanted to get out of the case, and  
12 asked my opinion about whether I thought such a motion would work. He again  
13 raised this issue with me in a phone call on May 7, 2015. At no time prior to filing  
14 his Motion to Withdraw, did Mr. Kalfayan inform me that this motion was to be  
15 predicated on the purported class conflict of interest issue.

16 16. Attached as **Exhibit 10** is a true and correct copy of an email string  
17 between Willis Class Counsel and Best, Best & Krieger concerning the Willis Class  
18 Lists.

19 17. Attached as **Exhibit 11** is a true and correct copy of relevant  
20 portions of the hearing transcript for January 14, 2007. Among the relevant  
21 portions is page 6 at lines 23 through 28, which reads as follows (emphasis  
22 added):

23 MR. ZLOTNICK: . . .MR. DUNN WANTS TO EXPAND THE CLASS IN  
24 ESSENCE TO ENCOMPASS PUMPERS. YOU KNOW, THIS WAS A  
25 MATTER THAT WE DISCUSSED AT SOME LENGTH. I WAS  
26 GENERALLY OF THE VIEW THAT IT WAS PREFERABLE TO LIMIT  
27 THE CLASS TO NONPUMPERS AND THAT THERE WERE POTENTIAL  
28 CONFLICTS DOWN THE ROAD BETWEEN THE PUMPER GROUP AND  
NONPUMPER GROUP.

1           18. Attached as **Exhibit 12** is a true and correct copy of relevant  
2 portions of the hearing transcript for March 12, 2007. Among the relevant  
3 portions is page 38 at lines 4 through 13, which reads as follows (emphasis  
4 added):

5           THE COURT: I AGREE WITH YOU, MR. LEININGER. THIS HAS  
6 TO BE A COMPREHENSIVE ADJUDICATION. WE HAVE TO ENSURE  
7 THAT, AS MR. JOYCE INSISTS, THAT EVERY PARTY HAVE DUE  
8 PROCESS AND THEY NOT BE DEPRIVED OF A RIGHT WITHOUT DUE  
9 PROCESS. WE HAVE TO ENSURE THAT **ANY JUDGMENT THAT IS**  
10 **ENTERED IN THIS CASE WILL BE EFFECTIVE TO**  
11 **ADJUDICATE THE RIGHTS OF EVERYBODY THAT IS THERE**  
12 **IN THAT VALLEY, OR I SHOULD SAY ALL THE PARCELS THAT**  
13 **ARE IN THAT VALLEY, AND THE RIGHTS TO WATER FLOW FROM**  
14 **THE PROPERTY. AND IT IS A REASONABLE AND BENEFICIAL USE**  
15 **OF EACH PARCEL.**

16           19. Attached as **Exhibit 13** is a true and correct copy of relevant  
17 portions of the hearing transcript for April 16, 2007. Among the relevant  
18 portions is page 10 at lines 13 through 17, which reads as follows:

19           THE COURT: SO I GUESS WHAT I'M LOOKING AT HERE IS I'M  
20 TRYING TO PARE DOWN THE VARIOUS SUBCLASSES, IF WE CAN,  
21 AND TO MAKE SURE THAT WE COVER EVERYBODY WHO HAS ANY  
22 RIGHTS WITHIN THIS ANTELOPE VALLEY, AND MAKE SURE THAT  
23 THEIR RIGHTS ARE PROPERLY PROTECTED AND ADJUDICATED.

24           20. Attached as **Exhibit 14** is a true and correct copy of relevant  
25 portions of the hearing transcript for May 21, 2007. Among the relevant portions  
26 is page 29 at lines 16 through 28, which reads as follows:

27           MR. ZLOTNICK: YES, YOUR HONOR. I THINK THAT MAKES SENSE.  
28 BUT I WOULD LIKE TO JUST BRIEFLY GO BACK TO ONE OF THE  
POINTS THAT HAS BEEN IN THE AIR HERE. AND ALTHOUGH OUR  
ORIGINAL PLEADING WAS NOT LIMITED TO NONPUMPERS, I  
THINK, YOU KNOW, IN THE COURSE OF DISCUSSIONS WE HAVE  
HAD OVER THE LAST SEVERAL MONTHS, IT DOES SEEM TO ME  
THAT THAT IS PROBLEMATIC FOR US TO REPRESENT BOTH  
GROUPS. SO, YOU KNOW, I THINK THAT IT DOES NEED TO BE SOME  
SEPARATE REPRESENTATION.

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THE COURT: IT SEEMS TO ME TO BE A CONFLICT BETWEEN THE PUMPERS AND NONPUMPERS.

MR. ZLOTNICK: RIGHT. THERE SEEMS TO BE. THERE ARE DIFFERENT ISSUES.

21. The issue of conflicts of interest within in the context of the classes and structuring a comprehensive adjudication continued into 2008. Attached as **Exhibit 15** is a true and correct copy of relevant portions of the hearing transcript for January 14, 2008.

22. During the process of disseminating class notice, I and my staff spent considerable amounts of time reviewing the Class lists. There were various errors and issues that required correction. In all of my class action cases, in which I am always the Plaintiff, I very closely participate and monitor the class notice process.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 27<sup>th</sup> day of July 2015, at Hermosa Beach, California.

**Michael D.  
McLachlan**

Digitally signed by Michael D. McLachlan  
DN: cn=Michael D. McLachlan, o=Law Offices of Michael D. McLachlan, ou, email=mike@mclachlanlaw.com, c=US  
Date: 2015.07.26 21:15:48 -07'00'

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Michael D. McLachlan